IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 374 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHESH TRADING CO.

Appearance:

MR ST MEHTA APP for Petitioner

MR YN RAVANI for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/09/2000

ORAL JUDGEMENT

This revision application under Section 397 read with Section 401 CrPC has been preferred by the State of Gujarat against the judgment and order dated 3rd June, 1994 passed by the learned Special Judge, Junagadh in Special Case No. 4 of 1994.

It appears that the District Supply Inspector-the complainant on 26th May, 1993 collected some samples of petrol and diesel from the accused-Trading Company of which the four accused are the partners. Upon examination by the Forensic Science Laboratory, the said samples were found to be of the higher density in contravention of the Motor Spirit & High Speed Diesel [Prevention of Malpractice in Supply & Distribution] Order, 1990. The accused were thus alleged to have committed offence punishable under Section 7 of the Essential Commodities Act, 1955 [hereinafter referred to as, `the Act']. The complaint was lodged by the District Supply Officer before the Special Court, Junagadh. In paragraph 6 of the comlaint, it was stated that by order dated 28th February, 1994 made by the District Collector, Junagadh, the complainant was authorised to lodge the complaint in question. After issuing summons upon the accused persons, by the impugned order dated 3rd June, 1994, the learned Special Judge held that the Court had no power to take cognizance of the offence upon the complaint lodged by the complainant who was not authorised to lodge such complaint by the State. Accordingly, the learned Judge dismissed the complaint. Feeling aggrieved, the State Government has preferred the present revision application.

Sections 11 and 12AA (1) of the Act, in so far as is relevant, reads as under :-

`11. Cognizance of offences -

No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code 945 of 1860) or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not.

12. Special provision regarding fine -

12-A. xx xx xx xx xx

12-AA Offences triable by Special Courts -

(1) Notwithstanding anything contained in the Code -

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(b) xx xx xx xx

(c) xx xx xx xx

(d) xx xx xx xx

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorised in this behalf by the Government concerned or any person aggrieved or any recognized consumer association whether such person is a member of that association or not, take cognizance of that offence without the accused being committed to it for trial;

(f) xx xx xx xx

Under section 11 of the Act, an offence under the Act can be taken cognizance of only at the instance of either a Public Servant, as defined in Section 21 IPC or a person aggrieved or a recognized consumer association. Section 12-AA (1) starts with a non-extant clause ie., `..Nothwithstanding anything contained in the Code...'. The said sub-section provides for procedure as regards lodging of complaint, taking of cognizance of an offence, trial, the punishment that can be imposed by the Special Court, etc. Clause (a) thereof provides inter alia that the offence under the Act shall be triable only by the Special Court constituted for the area in which the offence has been committed. Clause (e) empowers the Special Court to take cognizance of the offence under the Act, inter alia, upon perusal of the police report or upon a complaint made by an officer of the State Government authorised in this behalf by the State Government or any person aggrieved or any recognized consumer association. The intention of the Legislature

in enacting Section 12AA of the Act is explicit. What is intended is `speedy trial' of an offence under the Act in a `summary manner'. Clause (e) of Section 12-AA requires to be read in harmony with Section 11 of the Act ie., the words `public servant' occuring in Section 11 of the Act have been qualified by the words, `By an officer of the State Government authorised in this behalf by the Government concerned appearing in Section 12AA (1) (e) of the Act. The cognizance of offence under the Act can be taken by the Special Court either upon a police report or upon a complaint made by the officer so authorised by the Government concerned. Thus, no public servant can lodge complaint in respect of the offence committed under the Act unless he is authorised in this behalf by the State Government. It is well settled proposition of law that power conferred by the Statute cannot be delegated except where Act permits such delegation; either by express words or by necessary implication.

It is indisputable that in the present case, the complainant-District Supply Officer was empowered to lodge complaint by the District Collector ie., not by the State Government, as envisaged in the above referred clause (e) of sub-section (1) of Section 12AA of the Act. The authority which has been conferred upon the State Government could not have been exercised by the District Collector. The learned Judge, therefore, in my view, was right in holding that he had no authority to take cognizance of the offence under the Act, at the instance of the complainant who was not authorised in that behalf by the State Government.

In view of the above discussion, the Revision Application is dismissed. Rule is discharged.

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Prakash*